

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

SCOTTSDALE INSURANCE
COMPANY,

Plaintiff,

vs.

MICHAEL S. TOLLIVER and SANDRA
L. TOLLIVER,

Defendant.

Case No. 04-CV-227-CVE-FHM

**FINAL
REPORT AND RECOMMENDATION**

Plaintiff's Supplemental Motion for Attorneys' Fees [Dkt. 185] is before the undersigned United States Magistrate Judge for Report and Recommendation.

On March 25, 2009, the undersigned issued a Partial Report and Recommendation, [Dkt. 227], which addressed the legal issues presented by Plaintiff's Motion for Attorney Fees. The parties were instructed to meet and confer to determine whether they could agree on any matters related to the amount of fees. The parties have filed a Joint Stipulation Concerning the Proper Amount of Attorneys' Fees to be Recommended Pursuant to Plaintiff's Supplemental Motion for Attorneys' Fees in which the parties report they have agreed on the amount of attorney fees recoverable by Plaintiff in the amount of \$140,000.00. [Dkt. 235].

The Stipulation resolves only the amount of the attorney fee award. The parties have not agreed on the legal issues addressed in the Partial Report and Recommendation, [Dkt. 227], and Defendants reserve their right to object to the recommendations contained therein.

Based on the findings in the Partial Report and Recommendation, [Dkt. 227], and the parties' stipulation, the undersigned RECOMMENDS that the Court GRANT Plaintiff's Supplemental Motion for Attorneys' Fees [Dkt. 185] and award Plaintiff attorneys' fees in the amount of \$140,000.00.

In accordance with 28 U.S.C. §636(b) and Fed. R. Civ. P. 72(b), a party may file specific written objections to this Report and Recommendation and the Partial Report and Recommendation issued on March 25, 2009. Such specific written objections must be filed with the Clerk of the District Court for the Northern District of Oklahoma within ten (10) days of being served with a copy of this report. The parties are advised that the 10-day period for filing objections to the Partial Report and Recommendation entered on March 25, 2009, [Dkt. 227], begins running on the date this Final Report and Recommendation is entered.

If specific written objections are timely filed, Fed.R.Civ.P. 72(b) directs the district judge to:

make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

Fed.R.Civ.P. 72(b); see also 28 U.S.C. § 636(b)(1).

The Tenth Circuit has adopted a "firm waiver rule" which "provides that the failure to make timely objections to the magistrate's findings or recommendations waives appellate review of factual and legal questions." *United States v. One Parcel of Real Property*, 73 F.3d 1057, 1059 (10th Cir. 1996) (quoting *Moore v. United States*, 950 F.2d 656, 659 (10th

Cir. 1991)). Only a timely specific objection will preserve an issue for de novo review by the district court or for appellate review.

DATED this 28th day of April, 2009.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE